

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZENITH FREEDMAN,
Plaintiff,

No. C 06-02916 CRB

ORDER

v.

SHERIFF'S OFFICER TONG, et al.,
Defendants.

Plaintiff Zenith Freedman has submitted a request for appointment of counsel. Her request is hereby DENIED.

Defendant has submitted a motion to dismiss the case due to Plaintiff's repeated failure to comply with her discovery obligations. See Fed. R. Civ. P. 37, 41(b); see also Nat'l Hockey League v. Metro Hockey Club, Inc., 427 U.S. 639, 640-41 (1976); Wanderer v. Johnston, 910 F.2d 652 (9th Cir. 1990). The Court recognizes that Plaintiff has routinely failed to produce responses to Defendant's discovery requests, and that she has repeatedly violated orders by this Court and Magistrate Judge Zimmerman. Nonetheless, the Court declines to exercise its discretion to dismiss the case. In light of Plaintiff's limited personal resources and the fact that, by their own admission, "Defendants are unable to point to specific documents that have not been produced," the ultimate sanction of dismissal is not warranted here. The Ninth Circuit's guidance on the proper application of Rule 37 counsels

1 against dismissal in this case given the “public policy favoring disposition of cases on their
2 merits” and the fact that “less drastic sanctions” appear to have brought about a satisfactory
3 resolution of the discovery dispute. See Wanderer, 910 F.2d at 656 (quoting Malone v.
4 United States Postal Service, 833 F.2d 128, 130 (9th Cir.1987)).

5 **IT IS SO ORDERED.**

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8 Dated: March 19, 2007



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE